



Mark E. Shere, Attorney
Environment • Litigation

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STATE OF INDIANA
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF AIR MANAGEMENT

Janet McCabe
Assistant Commissioner
Office of Air Management
Indiana Department of Environmental Management
PO. Box 6015
Indianapolis, IN 46206-1595

Dear Ms. McCabe:

At the last **NO_x** work group meeting, you requested specific suggestions for rule language to respond to the **NO_x** SIP Call.


I am writing on behalf of Indianapolis Power & Light to ask that **IDEM** include a trading "Safe Harbor" in its next version of this rule. I have written you about this Safe Harbor previously, but we did not have a chance to discuss it in any detail because the rule's development was postponed.

The reasons for the Safe Harbor are simple - to allow long-term planning to make the trading system reliable, and to prevent facilities from being forced to implement ineffective **NO_x** controls at costs that can reach \$20,000 per ton or more.

The Safe Harbor is a lawful, common sense method of achieving these objectives. It lies within the clear scope of **IDEM's** flexibility in implementing the SIP Call. As the federal court of appeals explained in its decision on the SIP Call, "EPA has effectively ruled that each affected state must get down to the **NO_x** emission levels that would prevail if it removed all **NO_x** emissions costing \$2,000/ton or less to remove." State of Michigan, 213 F.3d 663, 680 (D.C. Cir. 2000). This is just what the Safe Harbor would do.

Specific rule language follows. I urge you to include this language, at least on a tentative basis, in the next version of **IDEM's** rulemaking. IPL would be pleased to meet with you and your staff to discuss the need for the Safe Harbor and its implementation in an approvable SIP revision.

Sincerely,


Mark E. Shere

Janet McCabe, Assistant Commissioner
October 30, 2000
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cc: Bryan G. Tabler, Senior Vice President, General Counsel, & Secretary,
Indianapolis Power & Light Co.
Terry M. Hogan, Manager, Environmental Affairs,
Indianapolis Power & Light Co.

326 IAC 10--_ Compliance Procedures

Authority:

Affected:

Sec. 3. (a) Compliance with this rule shall be achieved in accordance with one (1) of the following:

- (1) Complying with the emissions limits in section [] of this rule for each unit.

For industrial, commercial, or institutional steam generating units subject to this rule, the owner or operator may comply with an emissions limit based on a fuel switching program. . . .

Instead of complying with the emissions limits in section [] of this rule on a unit-by-unit basis, the owner or operator subject to this rule may comply with an emission **limit** based on an approved emissions averaging plan. . . .

- (G) A complete averaging plan shall include the following:

(H) An averaging plan may also include the following:

- (i) A detailed **description** of all control measures that can be **implemented by** the owner or operator at an average system cost of up to \$2,000 **per** ton of reduced **NOx** emissions
- (ii) A schedule **providing** for implementation of each of the control measures identified in the **preceding paragraph by [compliance date]**
- (iii) A detailed estimate of the additional tons of **NOx**, if **any**, necessary for the system to **comply** with clause (I) or (J)
- (iv) An enforceable commitment by the owner or **operator** to purchase emission allowances pursuant to the **NOx budget trading program** under [section **1** of this rule, as necessary for the system to **comply** with the clause (I) or (J), at a price up to \$2,000 per ton.

- (J) If one (1) or more of the units does not meet the requirements under clause (I), the owner or operator shall demonstrate that the total actual ~~Btu-weighted-average~~ amount of emissions ~~rate~~ for the units in the plan is less than or equal to the total amount of ~~Btu-weighted-emissions~~ rate ~~for~~ the same units had they each been operated, during the same period of time, in compliance with the applicable emission limitation in section 2 of this rule as follows:

- (i) A group showing of compliance shall be made based on the following equation:

Current formula:

$$\frac{\sum_{i=1}^n (R_{ai} \times HI_{ai})}{\sum_{i=1}^n HI_{ai}} \leq \frac{\sum_{i=1}^n (R_{li} \times HI_{ai})}{\sum_{i=1}^n HI_{ai}}$$

Revised formula:

$$\left[\sum_{i=1}^n (R_{ai} \times HI_{ai}) \right] - A_t - A_p \leq \sum_{i=1}^n (R_{li} \times HI_{ai})$$

- Where:
- R = Actual average emission rate for **unit** I, in **lb/mmBtu**
- L = Applicable emission limitation for **unit**, as specified in section 2 of this rule
- HI_{ai} = Actual heat input for unit I, in **mmBtu**
- n = Number of units in the averaging plan
- A_t = Actual emission allowances **purchased** through the NOx trading svstem (in pounds).
- A_p = Emission allowances identified in an **approved** averaging: plan (**in pounds**), but unavailable for purchase through the NOx trading svstem at less than \$2.000 per ton